

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Jeremy John Wells, #223161,)	Civil Action No. 6:15-0703-MBS
)	
Petitioner,)	
)	
v.)	
)	ORDER AND OPINION
Willie Eagleton, Warden of Evans)	
Correctional Institution,)	
)	
Respondent.)	

Petitioner Jeremy Wells (“Petitioner”), proceeding pro se and in forma pauperis, brings this action against Respondent Willie Eagleton pursuant to 28 U.S.C. § 2241.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner entered a guilty plea to second degree non-violent burglary, grand larceny, financial identity fraud, and forgery on April 10, 2013, in the Spartanburg County Court of General Sessions. Petitioner was sentenced to five years on each count with the sentences to run concurrently. Petitioner contends that the sentences were also intended to run concurrently with a North Carolina sentence entered on February 3, 2012. ECF No. 9 at 3. Petitioner brings this action alleging that the South Carolina Department of Corrections (“SCDC”) miscalculated his sentence, thereby causing him to exceed his correct sentence by three months. ECF No. 9. Petitioner asserts that SCDC calculated his sentence start date as April 10, 2013, but he should have received credit for time served starting on February 3, 2012. Petitioner states that he has filed one formal grievance with SCDC but has not received a response, so he cannot exhaust his appellate remedies. ECF No. 9 at 7.

In accordance with 28 U.S.C. § 636(b) (2012) and Local Civil Rule 73.02, D.S.C., the matter was referred to United States Magistrate Judge Kevin McDonald for a Report and Recommendation. The Magistrate Judge reviewed the petition pursuant to 28 U.S.C. § 1915(e)(2)(B). The Magistrate Judge filed a Report of Magistrate Judge on March 9, 2015. The Magistrate Judge determined that Petitioner had not exhausted his state court remedies. Accordingly, the Magistrate Judge recommended that the complaint be summarily dismissed without prejudice and without requiring Respondent to file an answer or return. ECF No. 15. The Magistrate Judge also recommended that this court deny a Certificate of Appealability. *Id.* Petitioner did not file objections to the Report of Magistrate Judge. However, on March 12, 2015, Petitioner did file a letter that has been construed as a motion to amend petition. ECF No. 17. Petitioner included a copy of an order amending sentence from the Spartanburg County Court of General Sessions, dated February 26, 2015. In the order, the sentencing judge clarified that Petitioner's sentences were intended to run concurrently with each other and the North Carolina sentence, and that Petitioner should receive jail credit commencing February 3, 2012. ECF No. 19-1.

II. DISCUSSION

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight and the responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* review of any portions of the Report and Recommendation to which a specific objection is made. *Id.* The district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982).

The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge. 28 U.S.C. § 636(b)(1).

Petitioner did not file any objections to the Magistrate Judge's Report and Recommendation. The court further notes that Petitioner communicated to the court that he was released from custody on March 11, 2015. ECF No. 20. Relief pursuant to § 2241 can only be extended to prisoners in custody. 28 U.S.C. 2241(c). Accordingly, there is no relief to be granted to Petitioner. Therefore, the § 2241 petition is **DENIED** as moot.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Margaret B. Seymour
Senior United States District Court Judge

April 30, 2015
Columbia, South Carolina